

Remarks

A first non-final Office Action mailed October 7, 2003 has been received and carefully reviewed. Claims 1-70 are pending in the application. Claims 1-43, 45-58, and 60-70 have been rejected. Claims 44 and 59 are indicated as being directed to allowable subject matter. Reconsideration of the application as amended and withdrawal of the present rejections are respectfully requested in view of the following remarks.

Applicant acknowledges the objections to the drawings. Applicant submits herewith a replacement drawing of Figure 1 which incorporates elements of claims 39 and 70 identified by the Examiner (*see, e.g.*, calorimeter 100 coupled to a processor 121, computer readable medium 123/127 accessible by processor 121). An annotated sheet showing the changes to Figure 1 is also attached herewith. The specification has been amended to describe the elements introduced to replacement Figure 1. No new matter has been added to the specification or drawings.

Claims 1-3 were rejected under 35 U.S.C. § 102(b) as being anticipated by *MacNeil et al.* Applicant respectfully notes that the Examiner likely intended to assert *MacNeil* under 102(a) rather than 102(b). Claims 4-7, 9-15, 17-19, 21, 22, 26, 27, 29, 30, 41-43, 45-51, and 53 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *MacNeil*. Claims 8 and 16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *MacNeil* in view of *Atkins*. Claims 20, 23-25, 32-40, 56-58, and 60-70 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *MacNeil* in view of *Tibbetts*. Claims 28, 31, 52, 54, and 55 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *MacNeil* in view of *Richard et al.*

Concerning *MacNeil*, as was discussed with the Examiner in a telephone conversation, this reference is not a qualified reference under 35 U.S.C. § 102 or § 103. The *MacNeil* reference, contributions to which were made by two of the inventors of the instant application, has a publication date that is after the filing date of the instant application. Although *MacNeil* indicates that the manuscript was received by the Journal of The Electrochemical Society on August 13, 1999, Applicant has verified that this submission was subject to a non-public, confidential submission process. Accordingly, any public disclosure of *MacNeil* occurred after the filing date of the instant application.

In view of the removal of *MacNeil* as a qualified reference under 35 U.S.C. §§ 102 and 103, claims 1-70 are clearly neither anticipated nor rendered obvious by the remaining references, *Atkins*, *Tibbetts*, and *Richard* or other art of record, alone or in combination.

Without acquiescing to the Examiner's characterization of the relied-on references as they have been applied to Applicant's claims, Applicant believes it unnecessary to address all grounds for rejection of every independent and dependent claim in view of the clear grounds for patentability of the pending claims. Applicant, however, reserves the right to address these rejections should the Examiner maintain the rejection of the claims, notwithstanding Applicant's remarks presented hereinabove. Should the Examiner desire or require additional details concerning the inapplicability of the *MacNeil* reference as discussed above, Applicant invites the Examiner to contact Applicant's Representative or otherwise indicate such in the next official communication.

It is believed that claims 1-70 are in condition for allowance and notification to that effect is respectfully requested. The Examiner is invited to contact Applicant's Representatives, at the below-listed telephone number, if prosecution of this application may be assisted thereby.

Respectfully submitted,

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Date

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